

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6919 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

MALPARA GOPALAK SAHAKARI MANDALI LTD.,

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioners

MR. S.P.DAVE, LD.GOV'T. PLEADER FOR Respondents

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 22/01/97

ORAL JUDGEMENT

Malpara Gopalak Sahakari Mandali Ltd., and
certain other persons are petitioners before me.
According to the case being presented by the
petitioners, the petitioner no.2, 3 & 4 had purchased
lands belonging to the petitioner no.1 being Survey No.
3 Paiki, admeasuring 3 acres 16 gunthas, 4 acres 23

gunthas and 3 acres 16 gunthas, in all 11 Acres and 13 Gunthas under the Registered Sale Deed dated 7th October 1991. With a view to recognise the said transactions in the Revenue Record, the mutation entry No. 527, 528 and 529 came to be posted in the Revenue Record on October 10, 1991, and ultimately came to be certified by the Deputy Mamlatdar, Gadhada, in his orders dated December 20, 1991. It appears that a third party, namely one Shri G.K. Narottam Nandji had initiated certain proceedings before the Deputy Collector, Palitana against the certification of the above said entries. Ld. Deputy Collector, Palitana, was pleased to take the said case in revision and by the orders dated September 20, 1993 the Deputy Collector was pleased to reject the entries made by the Deputy Mamlatdar. Against these orders, the petitioners had preferred appeal before the Collector, Bhavnagar. The said appeal was heard & decided by learned Collector, Bhavnagar. Under his orders dated December 06, 1993, Collector, Bhavnagar, was pleased to reverse the orders passed by Ld. Deputy Collector, Palitana. The net effect of this was that the above said three entries which were in favour of the petitioners reflecting the said transactions dated 7th October, 1991, came to be revived. Though the above said was the position, surprisingly enough, Collector, Bhavnagar had issued certain orders to Mamlatdar Gadhada, asking him to send papers for the suo motu revision. The papers were transmitted and the Collector Bhavnagar was pleased to take the matter in suo motu revision. The said proceedings were registered as Revision Application No. 711 of 1993. After taking the matter in suo motu revision, Collector, Bhavnagar, was pleased to come to the conclusion that the said entries were required to be cancelled. Being aggrieved and dissatisfied with these orders, the present petitioners had approached Deputy Secretary (Appeals) Department of Revenue, State of Gujarat, by filing the necessary appeal. This proceedings also have been terminated against the petitioners, and therefore, they are before me.

The principal contention being raised by learned counsel Mr. Parikh for the petitioners is that, when Collector, Bhavnagar had decided the suo motu revision proceedings, all was done behind the back of the petitioners and that, a reasonable opportunity of being heard was never afforded to them. Ld. counsel points out paragraph no.5 from the said orders which would go to show that, under a communication dated 1st January, 1994 the matter was ordered to be taken in suo motu revision and later on the same has been decided. There is absolutely no mention that, while doing this exercise

under the suo motu revisional powers, that the petitioners were afforded a reasonable opportunity of being heard. The question therefore was to ascertain as to whether in fact any notice in this respect came to be given to the petitioners. The orders do not show the issuance or the receipt of any such notice. Ld. Government Counsel Mr. S.P. Dave after a considerable industry concentrating upon the government files, was not in a position to find out any such notice to be issued by the said authority to the petitioners. Therefore the factual contention coming from learned counsel Mr. Parikh for the petitioners shall have to be accepted, by saying that, these proceedings were initiated and completed behind the back of the petitioners, without affording them a reasonable opportunity of being heard. Once such a fact situation is established the legal consequences which would follow are not unknown. All the orders shall have to be set aside and the matter shall have to be retransmitted to the Collector, Bhavnagar, for decision, according to law and on merits, after affording a reasonable opportunity of being heard to the parties. The petition therefore succeeds to the above said extent. Rule is made absolute accordingly.

Upon the plea coming from learned counsel Mr. Parikh for the petitioners, which in my opinion requires a countenance, I must say that various contentions have been advanced in the memo of the petition and there are counter contentions to be raised by the learned government counsel. Any how, when I have preferred to remand the matter to the revisional authority, I have no opinion of mine to express on the said contentions. All these contentions shall have to be decided by the said authority, according to law and on merits.
